attainment and nonattainment pollutants, while requiring the thresholds in relative terms to be no more than 20 percent of the major source threshold for nitrogen oxides (NO_x) and volatile organic compound (VOC) and 2 percent of the major source threshold for the remaining criteria pollutants. Two tpy is considered trivial by EPA for all pollutants other than HAP in relation to major source thresholds in all attainment or nonattainment areas and will not prevent the EPA from collecting information of a consequential or significant nature. In addition, these levels are more commonly found in State part 70 programs and therefore should help to ease the transition from part 71 to part 70 operating permit programs.

In response to comments, EPA has decided to delete the aggregate source-wide emissions criteria for insignificant emissions of regulated air pollutants (§ 71.5(c)(11)(ii)(A) and (B) of the final rule). The EPA proposed these aggregate source-wide emissions criteria as an additional means to ensure that emissions that might otherwise trigger the applicability of applicable requirements or major source status would not be excluded from applications. However, EPA now believes that the proposed aggregate emissions thresholds would have significantly limited the value of the insignificant emissions provisions for most medium to large sources. This deletion should not impede the permitting authority's ability to write permits which assure compliance with applicable requirements and the requirements of part 71. The EPA also believes that the utility of aggregate

plant-wide thresholds is negligible because of various other safeguards already provided in the rule; in particular, section § 71.5(c)(11) requires applications to not exclude information needed to determine the applicability of, or to impose, any applicable requirement. In addition, the requirement of § 71.5(c)(11)(ii) that units or activities with insignificant emissions be listed in the application provides an opportunity for the permitting authority to review the source's decision to treat emissions as insignificant, while the single-unit emissions thresholds of §§ 71.5(c)(11)(ii)(A) and (B) limit the size of emissions to levels that would normally ensure that the units are not covered by extensive control requirements.

5. Compliance Certification

The part 71 proposal would have required sources to submit certifications that they were in compliance with all applicable requirements. Commenters requested further clarification of the certification requirements and argued that it was not clear exactly what efforts a source was required to make to determine its compliance status prior to certifying that it was in compliance with all applicable requirements, and that it was unclear whether or not a source was obliged to reconsider past applicability determinations prior to making such a certification. The EPA does not believe that any revisions to the rule are necessary to address the commenters' points. This is true because the white papers for part 70 address these issues

and sources may follow that guidance for purposes of completing part 71 permit applications.

E. Section 71.6 - Permit Content

Today's permit content provisions more closely track the provisions contained in current §§ 70.4 and 70.6 than did those in the proposal. Thus, the order of the paragraphs in § 71.6 is more similar to the permit content section of current part 70 than to the part 71 proposal. For example, the provisions dealing with the permitting authority's duty to address emissions units in the permit has been moved from § 71.6(a)(iv) to § 71.3(c), consistent with current part 70. In addition, using current part 70 as the template for permit content means that the provisions for "off-permit" contained in today's rulemaking mirror those found at § 70.4(b), while the off-permit provisions of the proposed rule tracked those contained in the August 1994 proposed revisions to part 70. Similarly, today's rulemaking adopts the requirements for emissions trading and operational flexibility that are found in current part 70.

In addition, EPA retains a provision related to the prompt reporting of deviations from permit conditions from the part 71 proposal. Current part 70 requires States to define "prompt" in their own programs, and today's rulemaking defines the term for the part 71 program and closes this gap in the proposed rule. Today's rulemaking also establishes a part 71 permit expiration date.

The EPA reiterates that today's rulemaking finalizes provisions for permit content on an interim basis in order to better facilitate smooth transition from implementation of part 71 to approved State programs established pursuant to the current part 70 rule. With respect to permit content provisions, the April 1995 and August 1995 proposals contain provisions which reflect the Agency's current best thinking, and subsequent to reviewing all of the comments on both proposals, EPA may finalize provisions for permit content that differ from those adopted today consistent with the approaches EPA eventually takes in promulgating final revisions to part 70.

1. Off-permit Operations

Under today's rulemaking, sources are allowed to make changes at a facility that are not addressed or prohibited by the permit terms, provided they meet the requirements of § 71.6(a)(12). The provision adopted today is patterned on §§ 70.4(b)(14) and (15), the analogous provisions in current part 70. Like part 70, part 71 requires that the source provide the permitting authority with contemporaneous written notification for these types of changes, that these changes be incorporated into the permit at renewal, and that the source keep certain records of these changes. Consistent with current part 70, § 71.6(a)(12) limits off-permit changes to those that do not constitute title I modifications, are not subject to any requirements under title IV of the Act, and meet all applicable requirements of the Act. In applying this provision, the Agency

will use the interpretation of the term "title I modification" that States are allowed to use under the current part 70 rule. EPA expects that allows a significant number of minor NSR changes, to the extent that they are not prohibited by the title V permit, to qualify for off-permit treatment.

Like part 70, part 71 does not allow off-permit changes to alter the permitted facility's obligation to comply with the compliance provisions of its title V permit and does not grant the permit shield to off-permit changes. For a more thorough discussion of the concept of off-permit changes, see the rationale for part 70's off-permit provision found at 57 FR 32269.

The part 71 proposal contained a modified off-permit provision at proposed § 71.6(q) that was designed in light of the 4-track permit revision procedures contained in the proposal and modeled on the off-permit provision contained in the August 1994 proposed revisions to part 70. Proposed § 71.6(q) would have allowed certain changes to remain off-permit but would have required the source to submit an application to revise its permit to reflect that change within 6 months of commencing operation of that change. In the August 1995 supplemental proposal to parts 70 and 71, the Agency indicated that off-permit provisions may be unnecessary if the streamlined permit revisions procedures for parts 70 and 71 are adopted as proposed therein. After reviewing comments on both proposals, EPA will decide whether to retain an off-permit provision in the Phase II rulemaking, consistent with

the approach EPA takes in finalizing permit revisions procedures. Off-permit treatment is available in the interim, consistent with that provided by current part 70, but EPA does not believe that many permits will be issued prior to the Phase II rulemaking and that the off-permit provision therefore will not be greatly utilized.

2. Operational Flexibility

Under the rule adopted today, sources will enjoy the same operational flexibility as is provided to part 70 sources under current part 70. Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70 rule at § 70.4(b)(12)(i)-(iii), and the rule adopted today, there are three different methods for implementing this mandate. Accordingly, section 71.6(a)(13)(i) provides for sources to make certain changes within a permitted facility that contravene specific permit terms without requiring a permit revision, as long as the source does not exceed the emissions allowable under the permit and the change is not a title I modification. Under the interpretation of the term "title I modification" that EPA is allowing States to take under the current part 70 rule, section 502(b)(10) changes may include changes subject to minor NSR, provided the change does not exceed the emissions allowable under the permit. Section 71.6(a)(13)(ii) also allows emissions

trading at the facility to meet limits in the applicable implementation plan when the plan provides for such trading on 7-days notice in cases where trading is not already provided for in the permit. Additionally, § 71.6(a)(13)(iii) allows emissions trading for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. For a thorough discussion of the flexibility allowed under the analogous part 70 provisions, see 57 FR 32266.

The part 71 proposal contained an approach to operational flexibility that was modeled on the August 1994 proposed revisions to part 70, not current part 70. The August 1995 supplemental proposal suggested further refinements to the concept. After reviewing comments on both proposals, EPA may adopt an approach to operational flexibility that is different from the one found in today's rulemaking, consistent with the approach EPA takes in finally revising part 70. While the approach adopted today differs significantly from that of the proposal, the Agency is adopting it on an interim basis in order to better facilitate transition to the State part 70 programs that are similarly based on the provisions governing operational flexibility under the current part 70 rule.

3. Affirmative Defense

In order to remain consistent with current part 70, EPA is adopting a provision from the part 71 proposal that would allow sources to assert an affirmative defense to an enforcement action

based on noncompliance with certain requirements due to an emergency. Such a defense would be independent of any emergency or upset provision contained in an applicable requirement. See § 71.6(g). This provision is consistent with that found in the current part 70 rule at § 70.6(g).

As a result of concerns identified in legal challenges to part 70, the Agency, in the August 1995 supplemental proposal, solicited comment on the need for, scope and terms of an emergency affirmative defense provision. The Agency is reviewing those comments, but has not yet made a decision on whether or not to modify or remove this additional affirmative defense provision from part 70. The Agency will make part 71 consistent with the decision reached for part 70 in the part 71 Phase II promulgation. In the interim, sources may rely on the affirmative defense offered by § 71.6(g).

4. Definition of Prompt Reporting

The proposal contained provisions concerning prompt reporting of deviations from permitting requirements at proposed § 71.6(f)(3) and (4). The final rule at § 71.6(a)(3)(iii) requires that each permit contain provisions for prompt notification of deviations.

Two commenters requested that the prompt reporting deadlines in part 71 be adjusted to reflect other environmental regulation timelines or to reflect State program guidelines that have been approved by the Agency for part 70 programs. The Agency disagrees with the request. Section 503(b)(2) of the Act

requires permittees to promptly report any deviations from permit requirements to the permitting authority. Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the operating permits program to determine, among other things, what constitutes a prompt notification. Included as factors in determining prompt notification would be elements such as pollutant concentration, deviation duration, and authority response time. Because sources and pollutants of concern vary among permitting authorities, States have adopted differing prompt reporting schedules. The Agency has reviewed its obligation to protect air quality on a national level, and has determined that its prompt reporting deadline is appropriate for this obligation. Therefore the deadlines contained in part 71 remain unchanged from the proposal.

Two commenters requested that part 71 clarify prompt reporting requirements for deviations other than those associated with hazardous, toxic, or regulated air pollutants, as described in § 71.6(a)(3)(iii)(B)(1) and (2). The Agency believes that the requirement contained in § 71.6(a)(3)(iii)(A), in which sources are to report all instances of deviations from permit requirements at least every six months, provides the basis for prompt reporting of all other deviations. However, the Agency is willing to clarify this reporting requirement and has modified section 71.6(a)(3)(iii)(B) by adding a statement that directs

sources to submit all other deviation reports in accordance with the timeframe given in § 71.6(a)(3)(iii)(A).

5. Inclusion of Federally Enforceable Applicable Requirements in Permits

Two commenters requested that EPA include in part 71 the analogue to § 70.6(b)(2), a provision that requires the permitting authority to identify in the permit any applicable requirements that are not Federally enforceable. The EPA disagrees with this request because part 71 permits will not include any non-federally enforceable applicable requirements; therefore, a requirement for the Agency to identify such terms as non-federally enforceable would be moot, and a part 71 analogue to § 70.6(b)(2) is not needed. Part 71 differs from part 70 in this respect. However, § 71.6(b) is consistent with the first paragraph of § 70.6(b), which provides that part 70 permit terms and conditions are to otherwise be federally enforceable.

6. General Permits

The proposal contained provisions at proposed § 71.6(l) addressing general permits, which were based on the proposed revisions to the general permits provisions in the August 1994 notice. Under part 70, the EPA afforded other permitting authorities the choice of utilizing general permits, and the Agency intended to provide this flexibility to itself. The Agency believes that general permits offer cost-effective means of issuing permits for certain source categories. The Agency has not yet decided on the proper approach concerning opportunities

for public review and judicial review associated with general permits, and in the interim, has decided to remain consistent with the current part 70 rule. Therefore, under today's notice, EPA's authorization to allow a source to operate pursuant to a general permit may proceed without public notice and does not constitute final permit action for judicial review purposes. Today's part 71 general permit provisions are found at § 71.6(d) and are patterned after the analogous provisions at current § 70.6(d). In the Phase II rulemaking, EPA intends to revise the part 71 general permit provisions if necessary to remain consistent with the approach the Agency ultimately takes in the final revisions to part 70.

7. Permit Expiration

The proposed rule contained a provision for rescinding part 71 permits at proposed § 71.4(1)(3). Under today's rulemaking at § 71.6(a)(11), part 71 permits would contain a provision that automatically cancels the part 71 permit upon expiration of the initial permit term or upon issuance of a part 70 permit, without the need for separate action to rescind the permit. The Agency believes that a clear expiration date is necessary in order to avoid potential confusion over which title V permit terms and conditions are valid. The majority of permitting authorities are moving towards final approval of part 70 programs. In those few instances where a particular permitting authority may not have final part 70 program acceptance by the deadline for implementation of part 71, the

Agency expects that final program approval will occur well before the five-year part 71 permit term (twelve years for certain municipal waste combustors) has expired. Once the part 70 program is approved, sources and permitting authorities may desire to begin implementation as soon as possible. The Agency has no desire to be a stumbling block in those efforts, nor does the Agency wish to promote confusion over which permit (part 71 or 70) would be in effect at a particular time.

One of the purposes of title V was to provide sources with certainty as to their applicable requirements. Part 71 and part 70 permits will be similar, but not necessarily congruent, e.g., part 71 permits would contain only federally-enforceable requirements, insignificant activities could differ, and reporting provisions would differ. In order to prevent the potential confusion stemming from an unexpired part 71 permit remaining in effect concurrent with a part 70 permit, the Agency has decided to preclude the event from occurring. No such comparable provisions are needed in part 70 because that program provides just one title V permit per source. Consequently, § 71.6(a)(11) provides that a part 71 permit automatically expires upon the earlier of the expiration of its term or the issuance of a part 70 permit to the source.

F. Section 71.7 - Permit Review, Issuance, Renewal, Reopenings, and Revisions

As discussed above, EPA is, on an interim basis, promulgating final regulations regarding permit issuance,

renewal, reopenings, and revisions for part 71 that are based upon the existing provisions governing State title V programs at 40 CFR, § 70.7. Consequently, the provisions adopted today differ from those contained in the part 71 proposal, which were based upon the August 1994 proposed revisions to part 70. The EPA is still in the process of adopting revisions to part 70, and thus is not able at this time to base part 71's provisions on the expected future changes to part 70. As a result, EPA has concluded, in response to comments, that the most reasonable approach is to model part 71's permit issuance, renewal, reopenings, and revisions procedures on the corresponding provisions in the existing part 70 rule. These changes from the proposal, in addition to other changes in response to comments, are identified below.

1. Permitting Authority's Action on Permit Application

First, the organization of the paragraphs has been changed from the proposal to be consistent with 40 CFR § 70.7(a). In addition, in § 71.7(a)(1), the word "modification" is now used in place of the word "revisions," which was used in the proposal. This is a technical change to the rule to make it conform with the language used in corresponding provisions in the current part 70 rule. Also, § 71.7(a)(1)(ii) has been changed to track § 70.7(a)(1)(ii) by explicitly providing that changes subject to minor permit modification procedures need not comply with the public participation requirements of § 71.7 and § 71.11. This change from the proposal is a result of the Agency's adoption in

today's rule of permit revision procedures modelled on those contained in the existing part 70 rule. Moreover, § 71.7(a)(1)(iv) has been adopted without the language providing that, in some cases, the terms of the permit need not provide for compliance with all applicable requirements that are in force as of the date of permit issuance. Again, this change is necessary to make § 71.7(a)(1)(iv) consistent with the corresponding provision at § 70.7(a)(1)(iv), which does not contain the proposal's language. That language was first proposed in the August 1994 proposed revisions to part 70, and the Agency is not yet prepared to adopt it into a final title V rule. Likewise, § 71.7(a)(1)(v) is being promulgated without references to the administrative amendment and de minimis permit revision procedures contained in the proposal in order to better match the current part 70 provisions at § 70.7(a)(1)(v).

Section 71.7(a)(2) is being adopted without the language in the proposal which would have required permitting authorities to take final action within 12 months after receipt of a complete application for early reductions permits under section 112(i)(5) of the Act because regulatory language addressing this requirement was moved to § 71.4(i)(3). Furthermore, this provision is being adopted without the language in the proposal that would have allowed permitting authorities to delay final action where an applicant fails to provide additional information in a timely manner as requested by the permitting authority, as § 70.7(a)(2) currently does not provide such authority.

A new section 71.7(a)(3) is being promulgated to require the permitting authority to ensure that priority is given to taking action on applications for construction or modification under title I of the Act. This change is made to make part 71 consistent with the corresponding provision in current part 70 at § 70.7(a)(3).

Section 71.7(a)(4) (§ 71.7(a)(3) in the proposal) deletes the references in the proposal to the proposed regulatory provisions addressing administrative amendments, de minimis permit revisions, and minor permit revisions, and tracks current § 70.7(a)(4) by providing that permitting authorities need not make completeness determinations for applications for minor permit modifications. This change is a result of EPA's basing § 71.7 on the current § 70.7. In addition, §§ 71.7(a)(5) and (6) (§§ 71.7(a)(4) and (5) in the proposal) are renumbered in order to track existing §§ 70.7(a)(5) and (6).

The proposal contained a provision at proposed § 71.7(a)(6) addressing how draft and final permits may be issued with respect to applicable requirements that are approved or promulgated by EPA during the permit process. This provision was proposed in the August 1994 proposed revisions to part 70 and is not contained in the current part 70 rule. For the reasons stated above, EPA is not yet prepared to adopt it into part 71, and so is deleting the proposed provision from today's final rule.

2. Requirement to Apply for a Permit

One commenter suggested revising 71.7(b) regarding the application shield to say that the permitting authority must set a reasonable deadline for the submission of additional information, and commented that EPA should not be able to request information that is "needed to process the application" but only that which is "reasonable and necessary to issue the permit". The Agency disagrees that the regulation should set a specific deadline for the submission of additional information because the determination of what is a reasonable time will vary depending on the information requested. Also, EPA disagrees that there is a distinction between information needed to process the application and information that is reasonable and necessary to issue the permit.

One commenter suggested revising § 71.7(b) to allow sources to operate subsequent to submission of a complete, but late, application or application for renewal. The Agency believes that extending an application shield to sources that fail to submit timely applications is inconsistent with the Act. The proposal for part 70 contained a provision that would have provided a grace period of up to three months to submit applications after the required submittal date. The EPA deleted this provision from the final part 70 rule because extending the application shield to sources that did not submit a timely application would have been inconsistent with section 503(c) of the Act. The Agency is promulgating § 71.7(b) to closely track the corresponding provision at current § 70.7(b). Consequently, the references in

proposed § 71.7(b) to the proposed provisions addressing administrative amendments, de minimis permit revisions, and minor permit revisions have been deleted and replaced by references to provisions addressing section 502(b)(10) changes and minor permit modifications. In addition, the proposal's reference to § 71.7(a)(3) has been replaced with a reference to § 71.7(a)(4), due to the restructuring of § 71.7(a).

3. Permit Renewal and Expiration

Section 71.7(c) is being promulgated to more closely match the corresponding provision under current § 70.7(c) than did the proposal. The references in proposed § 71.7(c)(2) to proposed §§ 71.5(b) and 71.5(c) have been replaced by a reference to § 71.5(a)(1)(iii), due to the restructuring of § 71.5. Moreover, § 71.7(c)(2) (§ 71.7(c)(3) in the proposal) is being promulgated without the language that would have provided that, where the permitting authority fails to act on a timely renewal application before the end of the term of title V permit, the permit shall remain in effect until the permitting authority does take final action. Instead that language (which is based upon the existing § 70.4(b)(10) of the current part 70 rule) is being promulgated at § 71.7(c)(3).

4. Permit Revisions

Commenters remarked that the Federal title V permit program as proposed in April 1995 would establish a new, added layer of permitting which would add unacceptably to the amount of time needed before a source could implement process changes. They

suggested that even though the April 1995 permit revision tracks attempt to build on existing preconstruction programs, they still pose substantial new requirements (e.g., new criteria for adequate prior review in NSR). These commenters opined that if EPA believes that insufficient public review is afforded by existing programs, the Agency should address those shortcomings, not start a new process. Another commenter suggested that clerical changes should be handled through notification of the change by an amendment letter to the permitting authority that would then be attached to the permit without any EPA review until permit renewal. The commenter further suggested that all minor source changes which do not violate any permit term and do not render the source newly subject to an applicable requirement should be allowed to follow this amendment procedure. Other commenters opined that the April 1995 proposed four track permit revision procedures were fundamentally flawed and must be replaced with simpler procedures. One commenter suggested that EPA Regions, not just delegated States, should be authorized to conduct "merged processing" to add NSR or section 112(g) terms to Title V permits, if such processing is retained in the final rule. Some suggested that EPA promote consistency between part 70 and part 71 permit programs to reduce confusion for sources that have to make a transition between different regulatory programs.

In light of these and other comments, EPA proposed in August 1995 a revised permit revision process, developed with extensive

stakeholder input, which proposes several ways of streamlining permit revisions, particularly for those changes subject to prior State review (e.g., NSR changes). In the interim, as discussed earlier in this preamble, rather than adopting the 4-track permit revision system that the Agency proposed for part 71 on April 25, 1995, the EPA has decided to adopt, for the first phase of part 71, the permit revision system in the current (July 1992) part 70 rule. Current part 70 provides three ways to revise a permit: the administrative amendment process, the minor permit modification process and the significant permit modification process. The specific regulatory changes to proposed part 71 taken to adopt these procedures are described below.

One commenter requested that EPA not follow the approach to "title I Modification" in the August 1994 proposed revisions to part 70 in defining the term for part 71. In implementing the current part 70 permit revision procedures during the interim period, EPA would apply the interpretation of "title I modifications" that States are allowed to apply under the current part 70 rule. Under this interpretation, minor NSR actions may be incorporated into the title V permit using the minor permit modification procedures of current part 70, or alternatively, may be made as off-permit changes if they are eligible.

a. Rationale for Providing Interim Permit Revision Procedures. The proposal indicated that due to the ongoing discussions with stakeholders regarding permit revision procedures under title V, EPA was considering finalizing part 71

in the interim without provisions for permit revision procedures. Several commenters suggested that EPA not finalize any portion of part 71 until permit revision procedures are finalized because they will influence how sources design their initial permit applications. The commenters argued that sources will need the ability to obtain expeditious revisions to permits, and that there is thus a need for provisions governing modifications. As discussed previously, EPA has decided to include the permit revision procedures of current part 70 in this interim part 71 rule, while reserving the right to adopt procedures based upon future changes to part 70, when part 70 revisions are promulgated and Phase II of this rule is completed.

The EPA agrees with commenters that including current part 70 revision procedures is most appropriate for several reasons. First, EPA believes that it is premature to adopt the procedures proposed in April 1995 for part 71, or in August 1995 for part 70, because both of these proposals involve outstanding issues. Although the August 1995 proposal contains the latest thinking on streamlined permit revision procedures, it would be inappropriate to rush to promulgate a proposed system before the Agency has taken time to consider comments on the August 1995 proposal and arrive at a final position. In the meantime, the Agency has at its disposal the permit procedures of the current part 70 rule under which the Agency continues to approve State programs.

Second, industry commenters note that a clear understanding of permit revision procedures is important as sources prepare

their part 71 permit applications. The revision procedures of part 70 are more clearly understood than any proposed procedures, having been promulgated by EPA and adopted by many State programs. Third, adopting the existing part 70 permit revision procedures insures a smooth transition from a Federal operating permits program to a State program due to the similarity between the two programs.

Finally, the Agency does not believe that many permit revisions will occur during Phase I of this program. The timing of permit issuance under part 71 is such that the Agency believes that few part 71 permits will be issued and fewer will need to be revised before States receive part 70 approval or before Phase II of part 71 is promulgated. Permit revision procedures in Phase I of the part 71 rule become more essential the longer part 71 programs are in place without a Phase II rule, which is possible if the Phase II rulemaking is delayed.

b. Description of Permit Revision Procedures. The part 71 proposal addressed permit revisions at proposed §§ 71.7(d)-(h) using proposed provisions from the August 1994 part 70 notice. Proposed § 71.7(d) would have defined when a permit revision is necessary; proposed § 71.7(e) would have addressed administrative amendments; proposed §§ 71.7(f) and (g) would have addressed de minimis permit revisions and minor permit revisions, respectively; and proposed § 71.7(h) would have covered significant permit revisions. All of these provisions have been deleted in today's rule, and replaced with new provisions at

§§ 71.7(d) and (e) that track the corresponding provisions in the current part 70 rule governing administrative amendments, minor permit modifications, and significant permit modifications. The EPA directs interested persons to the preamble to the final part 70 rule, 57 FR 32250 (July 21, 1992) for a detailed description of these permit revision procedures.

Under § 71.7(d), changes eligible to be processed as administrative amendments include administrative changes such as correction of typographical errors, changes in mailing address, ownership of the source (or part of the source) unless restricted by title IV, contact persons, and changes in individuals who have assigned responsibilities, (including the responsibility to sign permit applications). Administrative permit amendments can be handled by direct correspondence from the permitting authority to the facility after the appropriate information related to the changes has been supplied by the facility. As under current part 70, administrative amendments could also be used to address "enhanced NSR" changes, to which the permitting authority could also extend the permit shield. Sections 71.7(e)(1) and (2), which address minor permit modification procedures, are designed for small changes at a facility which will not involve complicated regulatory determinations. A source may make a change immediately upon filing an application for a minor permit modification, prior to the time the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to § 71.10) review the application. Eligible changes

could be processed individually or in groups, but the permit shield may not extend to these changes. Section 71.7(e)(3) covers significant modifications. In this track, the public, the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to § 71.10) will review the modification in the same manner as review during permit issuance. The permit shield may extend to changes processed under this track.

5. Permit Reopenings

The proposal addressed permit reopenings at proposed §§ 71.7(i) and (j). These provisions were modeled on the existing provisions at § 70.7(f) and (g), as proposed to be revised in the August 1994 notice. One of the features of that approach was a specific provision for reopening permits to incorporate new maximum achievable control technology (MACT) standards promulgated under section 112 of the Act. As part 70 has not yet been finally revised to adopt this approach, it is premature at this time to adopt it for part 71. Consequently, in order to more closely track the current part 70 rule and promote consistency with State programs developed and approved under the current rule, the part 71 provisions for permit reopenings adopted today at §§ 71.7(f) and (g) are modeled on the existing provisions at §§ 70.7(f) and (g), and do not include the proposed provisions concerning reopening permits to incorporate new MACT standards.

G. Section 71.8 - Affected State Review

The provisions of § 71.8 differ from provisions proposed in the part 71 proposal in several respects. First, because today's rulemaking adopts permit revision procedures based on the current part 70 rule, rather than those that were proposed in April, the cross references to § 71.7 were changed and the reference to de minimis permit revisions has been deleted. In addition, the final rule specifically provides, consistent with part 70, that timing of notice to affected States of major permit modifications is not tied to the timing of notice to the public.

Second, § 71.8(b) is being adopted to more consistently follow § 70.8(b)(2) in providing that where EPA delegates administration of a part 71 program, the permitting authority shall transmit notice of refusal to accept recommendations of an affected State as part of the permitting authority's submittal of the proposed permit to EPA.

Third, as discussed in Section III.B of this document, a new paragraph (d) has been added to § 71.8 that requires that part 71 permitting authorities provide notice of certain permitting actions to federally recognized Indian Tribes. While this is a departure from what part 70 currently requires of State permitting authorities, EPA agrees with commenters who suggested that federally recognized Indian Tribes should not be required to establish compliance with any eligibility criteria in order to be entitled to notice of Federal permitting decisions that may affect Tribal air quality. One commenter suggested that applying for treatment in the same manner as a State was a time consuming

and burdensome process for Indian Tribes and urged the elimination of that requirement for Tribes to receive notice of permitting actions. Consistent with the Agency's policy of maintaining government-to-government relationships with Indian Tribes, EPA (and delegate agencies) will notify federally recognized Indian Tribes of draft permits that may be issued to sources that could affect Tribal air quality, including all draft permits issued by EPA for the Tribal area and all draft permits for sources that are within 50 miles of the reservation boundary or the Tribal area. Accordingly, the Agency has added a new paragraph that provides that the part 71 permitting authority shall send notices of draft permits to federally recognized Indian Tribes whose air quality may be affected by the permitting action. The EPA is imposing upon itself this responsibility in order to further its government-to-government relationship with Tribes.

H. Section 71.9 - Permit Fees

1. Two-Phase Promulgation of Fee Requirements

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today adopting a two-phased approach to part 71 fee requirements. Upon Phase I promulgation, collection of fees should be sufficient to cover the anticipated program costs of Phase I. On the other hand, because the cost of Phase II is tied to procedures which will not be finalized until the Phase II rulemaking (i.e., revised and streamlined permit revision procedures), a fee amount for Phase

II cannot be finalized in today's rule. Thus, the Phase I fee covers all program costs except those associated with permit revisions which are excluded because the Phase II rulemaking will finalize streamlined permit revision procedures that will ultimately differ substantially from those contained in today's rule. Instead, the Phase II rulemaking will add to the fee the costs for the new permit revision procedures when they are finalized. More information on the determination of specific activities and costs associated with each phase is contained in the document entitled "Federal Operating Permits Program Costs and Fee Analysis (Revised)," which is contained in the docket for this rulemaking.

The two-phased approach to fee requirements will not impact the ultimate fee amount owed by a source. For the majority of sources, EPA expects that the part 71 application and associated fee submittal will occur after the Phase II rulemaking. For these sources, the fee will be paid all at once. Sources that submit their applications prior to the Phase II rulemaking will pay a Phase I fee in full at the time of application. The balance of the fee necessary to cover the costs of the Phase II provisions will be collected once the Phase II rule is promulgated. The specific timing and amount of the Phase II fee collection will be discussed in the Phase II rulemaking.

The EPA fully expects that the Phase II rulemaking finalizing permit revision procedures will be completed before any part 71 permits are issued and that no program costs will be

incurred in the interim period as a result of permit revisions. However, EPA recognizes that in the unlikely event that a part 71 permit is both issued and revised (under the interim revision procedures in today's rule) fees will not have yet been collected to cover the cost of the revision and that if the Phase II fee is finalized based on a streamlined permit revision process, there may be a shortfall in revenue. However, the alternative would be to finalize today a Phase I fee based on the interim revision procedures that potentially overcharges sources and would necessitate, if and when the permit revision procedures are streamlined as expected, a refund. The EPA wishes to avoid this unnecessary and burdensome process.

2. Fee Amount

The part 71 proposal proposed a base fee amount of $45 per ton/year which was based on a fee analysis which projected EPA's direct and indirect costs for implementing the part 71 program nationwide and dividing that by the total emissions subject to the fee. A detailed discussion of this methodology is found in "Federal Operating Permits Program Costs and Fee Analysis," which is contained in the docket for this rulemaking. Using the same basic methodology as the original fee analysis, EPA has calculated the costs of Phase I and has set the base Phase I fee amount at $32 per ton/year to cover these costs. The determination of this amount is contained in the report entitled, "Federal Operating Permits Program Costs and Fee Analysis (Revised)" (hereafter "Revised Fee Analysis"), which is contained

in the docket for this rulemaking. As proposed, the fee will be adjusted based on the level of contractor support needed for those programs where it is necessary for EPA to use contractors.

One commenter suggested that the $3 per ton surcharge to cover EPA oversight of contractor and delegated programs should be eliminated, noting that EPA does not charge oversight fees for State part 70 programs. The EPA agrees and believes that such a surcharge would be inconsistent with the approach taken in part 70. A full evaluation of the April 1995 comments was made after the development of the August 1995 proposal, in which EPA proposed to eliminate the surcharge. This evaluation of comments confirmed the direction EPA took in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August 1995 proposal. Accordingly, EPA is today deleting the surcharge provisions from §§ 71.9(c)(2) and (3). The EPA will continue to consider any comments received on the supplemental proposal, and, if necessary, will take any additional action on the surcharge in the Phase II rulemaking.

For reasons similar to those described in the preceding paragraphs on the surcharge, the EPA is deleting "preparing generally applicable guidance regarding the permit program or its implementation or enforcement" from the list of activities in § 71.9(b) whose costs are subject to fees. The EPA believes that this category partially duplicates the fourth category under § 71.9(b), general administrative costs. To the extent that it is not duplicative, it refers to guidance that is issued before

an individual part 71 program is in place. The EPA does not require that States charge fees for these activities for part 70 programs, and the Agency does not believe that such costs should be included in part 71 fees. This change does not result in a change in the fee structure because costs of activities which occur before the effective date of the part 71 program were not included in the original fee analysis. This change simply adjusts the list of activities in § 71.9(b) to more accurately reflect the activities whose costs were included in the fee analysis. Consistent with the deletion of the surcharge, the EPA is taking this action based on comments received on the part 71 proposal. If adverse public comment is received regarding this change as proposed in the August 1995 supplemental proposal, the EPA will take additional action as necessary in the Phase II rulemaking.

3. Fees for Delegated Programs

As discussed in the part 71 proposal, EPA intends to allow delegation of part 71 programs to States in many cases. Originally, EPA envisioned funding these delegated part 71 programs with revenue generated from part 71 fees. However, EPA is aware that many delegate agencies have the authority under State or local law to collect fees adequate to fund delegated part 71 programs. In some cases, these agencies could continue to collect fees even though EPA would be collecting part 71 fees. Several commenters pointed out that this would result in the undesirable situation of paying fees to two permitting

authorities. On the other hand, one commenter noted that if a delegate agency, in deference to part 71, rescinds its authority to collect fees, funding for the Small Business Assistance Program (SBAP) in that State could be adversely affected.

The EPA believes that the best way to address both of these situations is to suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which the State has adequate authority under State law to fund fully-delegated part 71 activities with fees collected from part 71 sources. This ensures that State revenue is available to administer the program, including the SBAP, while addressing the commenters' concerns about double fees. However, EPA cannot suspend fee collection for partially delegated part 71 programs, since in those situations EPA will still incur substantial administrative costs. Suspension of EPA fee collection does not constitute approval of the State's fee structure for part 70 purposes. Rule language codifying this approach has been added to § 71.9(c)(2).

The suspension of part 71 fees for delegated programs was proposed in the August 1995 supplemental proposal. While the timing of today's promulgation has not allowed thorough evaluation of comments on that proposal, the EPA agrees with the concerns about duplicate fees and the SBAP which were raised in reference to the part 71 proposal. A full evaluation of these comments was made after the development of the August 1995 proposal on this issue. This evaluation confirmed the direction

EPA had taken in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August proposal. Furthermore, today's action is consistent with EPA's position that its fees be based on program costs, because EPA will not incur any program costs after it fully delegates a part 71 program. The EPA will still evaluate all comments received on the August 1995 proposal and will take any necessary additional regulatory action on the suspension of part 71 fees for delegated programs in the Phase II rulemaking.

For part 71 programs that are delegated but for which EPA does not waive fee collection, EPA's policy will be to continue to collect part 71 fees itself. The proposed fee amount for part 71 programs was based on the assumption that certain activities would be more costly for EPA to implement than for States due to increased travel, unfamiliarity with individual sources, etc. However, commenters pointed out that when a program is delegated, this assumption is not applicable. The EPA agrees with this comment, and is today promulgating language establishing a lower part 71 fee for delegated programs which omits the increased cost assumption made for EPA-administered part 71 programs. Where EPA continues to collect part 71 fees for a fully-delegated program, the Phase I part 71 fee amount will be $24 per ton/year. The determination of this amount is contained in the Revised Fee Analysis. Furthermore, for partially delegated programs, the part 71 fee that EPA collects will be lower than the fee for an EPA-administered program because the fee will be adjusted to

account for the proportion of effort performed by the delegate agency at a lower cost. For these programs, the Administrator will determine the fee according to the formula in § 71.9(c)(4).

4. Timing of Fee Payment

The part 71 proposal provided that sources submitting their initial fee calculation worksheets must pay one-third of the initial fee upon submittal, and must pay the balance of the fee within four months. However, EPA believes that two changes discussed in today's preamble make this installment approach to fee payment infeasible. First, EPA is promulgating a later due date for permit applications, which would mean that under the proposed installment approach, receipt of two-thirds of the fee revenues would be delayed until the end of the first year of the program, which would not provide adequate funding for initial program activities. Second, EPA is promulgating a two-phased approach to fee collection. The EPA believes that it would be unnecessarily complicated and potentially confusing to provide for installment payment of the fee for one or both phases. For these reasons, EPA is promulgating language at § 71.9(e)(1) which clarifies that payment of the full fee amount for the first year is due upon submittal of the initial fee calculation worksheet.

In addition, because today's rule changes the due date for permit applications, a change must also be made to the deadlines for the initial part 71 fee calculation worksheets in the event that EPA withdraws approval of a part 70 program. The proposal contained a schedule for submission of the fee calculation

worksheet based on SIC code. The due dates ranged from 4 to 7 months after the effective date of the part 71 program. Changes to § 71.9(f)(1) adjust the fee calculation worksheet due dates to range from 6 to 9 months after the part 71 effective date, depending on SIC code.

5. Computation of Emissions Subject to Fees

A commenter pointed out that the rule language in proposed § 71.9(c)(5)(ii) inadvertently limits the 4000 ton cap on emissions subject to fees solely to programs administered by EPA, not delegated or contractor-administered programs. Accordingly, the EPA has amended this paragraph to clarify that the 4000 ton cap applies to all types of part 71 programs.

6. Penalties

The part 71 proposal contained a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the due date. In addition, the proposal assessed a penalty of 50 percent on underpayments with the 50 percent penalty assessed on the amount by which the source underpaid the fee owed. The proposal also provided relief from the penalty for certain underpayments where the source is making an initial fee calculation based on estimated rather than actual emissions. The proposal provided that where the underpayment results from an underestimate of future emissions and where the underpayment does not exceed 20 percent of the fee amount (i.e., where the source pays more than 80 percent of the fee owed), no penalty would be assessed.

Some industry commenters were concerned that establishing a penalty for underpayment for a source that underpays by as little as 20 percent would be too harsh in light of the uncertainty in making emissions estimates. Although title V requires a penalty to be assessed for failure to pay any fee lawfully imposed by the Administrator, the EPA agrees that there is a degree of uncertainty in estimating emissions, particularly for HAP sources, which are often smaller, and for which emission factors are not well-defined.

Upon consideration of comments and evaluation of the relative uncertainty of emission estimates for HAP listed pursuant to section 112(b) of the Act, the EPA is today promulgating in § 71.9(l)(4) an underpayment penalty which differs slightly from the proposal. For sources who base their initial fee calculation worksheet on estimated rather than actual emissions, the EPA will, for HAP emissions, apply the penalty to an underpayment of 50 percent or more. The penalty will still apply to an underpayment of 20 percent or more for non-HAP emissions. If a source is subject to fees for both HAP and non-HAP emissions, the underpayment which would trigger a penalty will be prorated based on what portion of the source's emissions are HAP versus non-HAP. Thus, to determine whether an underpayment would incur a penalty, such a source's HAP emissions would be multiplied by the 50 percent rate, and its non-HAP emissions would be multiplied by the 20 percent rate. The sum of these emissions rates determines the level of underpayment which,

if exceeded, would incur the underpayment penalty. The EPA believes that this approach offers significant relief to sources faced with difficulty in accurately estimating their emissions, while still ensuring that adequate fee revenues can be collected in a fair and timely manner.

7. Certification Requirement

The EPA believes that the correct interpretation of the part 71 certification requirement at § 71.5(d) is that it applies to all fee calculation documents. However, for clarity, EPA is today adding a requirement to §§ 71.9(e) and (h) which requires certification of the fee calculation worksheets by a responsible official. The added language in § 71.9 is simply a cross reference to the language in § 71.5(d).

I. Section 71.10 - Delegation of Part 71 Program

1. Delegation of Authority Agreement

With respect to the content of Delegation of Authority Agreements, EPA wishes to clarify that the adequacy of State permit fees must be addressed when EPA waives collection of part 71 permit fees. As described in section III.F.3 of this preamble, when EPA has determined that a delegate agency has raised adequate fee revenue from sources subject to title V to administer a fully-delegated part 71 program absent any financial assistance from EPA, then EPA will waive collection of part 71 fees. In such a case, the Delegation of Authority Agreement would specify that the delegate agency has sufficient revenue and will collect sufficient revenue from sources subject to title V

to administer all of its duties as outlined in the Agreement. The EPA will not waive fees when the part 71 program is partially delegated or when the delegate agency lacks sufficient revenue to fund the delegated part 71 program.

2. Appeal of Permits

The Agency has revised proposed § 71.10(i), which addresses the petition process for permits issued by delegate agencies. In lieu of restating which persons and parties may submit petitions to the Environmental Appeal Board pursuant to § 71.11(l)(1), § 71.10(i) provides that the appeals of permits under delegated program shall follow the procedures of § 71.11(l)(1).

3. Transmission of Information to EPA, Prohibition of Default Issuance, and EPA Objections

The final rule also makes certain changes to the proposed provisions addressing transmission of information to the Administrator, the prohibition of default issuance of permits, and EPA objections to proposed permits at §§ 71.10(d), (f) and (g). Essentially, these changes are being made today in order to better harmonize the final rule with corresponding provisions in the currently promulgated part 70 rule at §§ 70.8(a), (c) and (e). Regarding transmission of information to EPA, the reference in proposed § 71.10(d)(1) to proposed § 71.7(a)(1)(v) has been rewritten, and proposed paragraphs (2) and (3) have been merged into it in order to more closely track part 70. New paragraph (2) has been adopted in order to achieve consistency with § 70.8(a)(2).

The provision on prohibition of default issuance has been changed to follow the existing provision at § 70.8(e). In proposed § 71.10(f)(2), EPA had provided that the prohibition would not apply to permit revisions processed through the proposed de minimis permit revision track, following the August 1994 proposed revisions to part 70. As that track is not being adopted in this Phase I rule, the exception has been deleted.

Finally, § 71.10(g) on EPA objections has been changed from the proposal in order to follow the test established under the current part 70 rule for when EPA would object to proposed permits, and to follow the promulgated part 70 language providing for what shall happen when a permitting authority refuses to respond adequately to an EPA objection. This change includes deletion of the proposed reference to proposed § 71.7(a)(6), which is not being adopted as proposed in this final rule.

J. Section 71.11 - Administrative Record, Public Participation, and Administrative Review

The Agency has chosen to establish part 71-specific rules in today's promulgated § 71.11 for administrative procedures in order to clarify for the public and the regulated community those requirements associated specifically with Federal operating permits under title V of the Clean Air Act. Today's promulgated § 71.11 is based closely on the provisions of 40 CFR part 124. Part 124 covers a number of EPA permitting programs, and the process of identifying the separate and distinct requirements associated with those individual programs can be complex. The

Agency feels that it is advantageous in this case to describe the administrative procedures for today's promulgated part 71 within the rule itself, since that will avoid potential confusion as to which provisions of part 124 apply to the part 71 program, and since interested parties will not be required to refer to separate regulations in discerning applicable administrative procedures.

Certain aspects of § 71.11 that would correspond to proposed streamlined part 71 permit revision processes discussed in the preamble to the supplemental part 70 and 71 proposed rules published on August 31, 1995 (60 FR 45529), are not addressed in today's notice because the Agency is not yet prepared to conduct final rulemaking for those processes. In the meantime, EPA is promulgating permit revision processes based on the current part 70 rule in response to numerous comments on the proposed part 71.

To accommodate basing part 71's permit revision procedures on the existing part 70 rule, today's notice makes certain changes to the regulatory language of § 71.11 as proposed on April 27, 1995 (60 FR 20804) in order to apply administrative procedures to the permit revision tracks as appropriate. Changes to the regulatory language that make reference to permit revision procedures were made in the first paragraph of § 71.11 and in § 71.11(l)(1). These sections make reference to specific types of permit revisions which in this promulgated rule are those permit revision procedures found in 40 CFR part 70, rather than the four-track permit revision procedures in the April 27, 1995

proposed part 71. Section 71.11(l)(1) describes the 30-day period within which a person may request review of a final permit decision. For significant modifications, the 30-day period begins with the service of notice of the permitting authority's action. This is unchanged from the proposal. For minor permit modifications and administrative amendments, the 30-day period begins on the date the minor permit modification or administrative amendment is effective.

Section 71.11(d)(3)(i)(D) has been modified in response to comments received which noted that under the proposal a requirement to notify any unit of local government having jurisdiction over the area where a source is located would result in notices to components of government which have no relationship to air quality and its impacts. Promulgated § 71.11(d)(3)(i)(D) stipulates that the local emergency planning committee (not "any" unit of local government) and State agencies having authority under State law with respect to the operation of the source are among the entities to receive a copy of notices of activities described in § 71.11(d)(1)(i).

Additional changes to the regulatory language of § 71.11 relate to treatment of a final permit decision as enforceable and effective where review by the EAB has been requested. In proposed §§ 71.11(i)(2) and 71.11(l)(6), the Agency proposed that a final permit decision would become effective immediately upon issuance of that decision unless a later effective date were specified in the decision. It was pointed out by several

commenters that, in other EPA permitting programs, such as the Resource Conservation and Recovery Act (RCRA) and PSD programs, an appeal request stays the effectiveness of a final permit decision. See 40 CFR § 124.15(b)(2). The EPA agrees that it would be unfair to force permittees to comply with permit terms during the time that they are subject to appeal, and that the proposal was inappropriately inconsistent with part 124 on this point. Thus, §§ 71.11(i)(2) and 71.11(l)(6) have been promulgated to conform to the longstanding Agency approach reflected in 40 CFR § 124.15, so that permittees are not unfairly required to comply with permit terms pending their review by the EAB. Under the final rule, those specific permit terms and conditions that are the subject of an appeal to EAB would be stayed, while the rest of the permit would become effective as otherwise provided in § 71.11(i)(2). Moreover, § 71.11 (i)(2) itself has been changed so that it better tracks part 124, which makes final permit issuance decisions immediately effective only where no comments requested a change in the draft permit; otherwise, permits are effective than sooner than 30 days after the issuance decision or following the conclusion of appeal proceedings, as applicable.

In response to comments which expressed concern that applicants should be able to appeal a final permit decision even in the absence of having commented on a draft permit, the Agency believes that applicants can appeal if the final permit differs from the draft permit, even if the applicant did not submit

comments on the draft permit. The Agency does not believe it would be appropriate to allow applicants to appeal where the final permit is identical to the draft permit, and the applicant had not commented on the draft permit. It is a far more efficient use of resources to resolve permitting issues in the administrative issuance process, rather than to allow applicants to raise issues on draft permits for the first time on appeal. To further clarify the ability of the applicant to appeal a final permit, the following language has been added to § 71.11(l)(1): "or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit".

Section 71.11(l)(6) has been added, incorporating language from 40 CFR part 124. Part 124 establishes general procedures clarifying the rules to which appellants are subject in all permit programs under part 124, and therefore EPA believes it is appropriate to extend these provisions to part 71 as well. This section outlines procedures for motions for reconsideration of appeals of final orders. It stipulates a 10 day deadline for motions, and notes that motions are to be directed to the EAB, unless the case had been referred to the Administrator by the Board, and in which the Administrator had issued the final order. The effective date of the final order is not stayed unless specifically so ordered by the Board.

One commenter suggested that the proposal's requirement of a right to appeal every permit decision would be overly burdensome, commenting that even de minimis revisions would be subject to

appeal. The EPA notes that final part 71 permitting actions are final actions for purposes of judicial review under section 307(b)(1) of the Clean Air Act. Consequently, EPA does not have the discretion to eliminate the opportunity for judicial review of final part 71 permitting actions. Moreover, EPA disagrees that requiring administrative appeal to the EAB as a prerequisite to judicial review is either redundant or jeopardizes a source's ability to rely on its permit. Requiring administrative exhaustion of remedies is longstanding practice in EPA permit programs, and EPA notes that States with approved part 70 programs generally require administrative appeal as a prerequisite to challenging permits in State court. Also, in requiring administrative exhaustion, litigation in Federal court over permit actions will often be avoided, thus conserving both public and private resources. Finally, since pending administrative appeal sources will be able to rely on the application shield, they will not be placed in any greater "jeopardy" than if they had directly appealed the final permit to Federal court.

Changes have been made to § 71.11(n) to replace the term "Administrator" with "permitting authority", to allow for those circumstances where a State has been delegated a part 71 program by EPA.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A-93-51. All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in Docket No. A-93-51.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant" regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The EPA has estimated the annualized cost of the part 71 program based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA believes the program will be implemented. A survey of those States showed that the number of part 71 sources in those States (many of which are not heavily inudstrialized) is much smaller than EPA's original estimates. The EPA had previously assumed that part 71 sources in 8 States would comprise 16 percent of all title V sources. However, in the States where EPA is likely to administer a part 71 program, the part 71 source population comprises slightly less than 6% of all title V sources. The estimated annualized cost of implementing the part 71 program is $19.8 million to the Federal government and $18.1 million to respondents, for a total of $37.9 million which reflects industry's total expected costs of complying with the program. Since any costs incurred by the Agency in administering a program would be recaptured through fees imposed on sources, the true cost to the Federal government is zero. The requirements for the costs result from section 502(d) of title V which mandates that EPA develop a Federal operating permits program. The proposed program is designed to improve air quality by: indirectly

improving the quality of State-administered operating permits programs; encouraging the adoption of lower cost control strategies based on economic incentive approaches; improving the effectiveness of enforcement and oversight of source compliance; facilitating the implementation of other titles of the Act, such as title I; and improving the quality of emissions data and other source-related data.

C. Regulatory Flexibility Act Compliance

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the Federal Register, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). The EPA has established guidelines which require an RFA if the proposed rule will have any economic impact, however small, on any small entities that are subject to the rule, even though the Agency may not be legally required to develop such an analysis.

The original part 70 rule and the recently proposed revisions to part 70 were determined to not have a significant and disproportionate adverse impact on small entities. Similarly, a regulatory flexibility screening analysis of the impacts of the part 71 rule revealed that the rule would not have a significant and disproportionate adverse impact on small entities; few small entities would be subject to part 71 permitting requirements because the proposed rule defers permitting requirements for nonmajor sources. Consequently, the

Administrator certifies that the part 71 regulations will not have a significant and disproportionate impact on small entities.

The draft regulatory impact analysis (RIA) was made available for public comment as part of the April 27, 1995 proposal. The primary difference between the current RIA and the prior draft is that the RIA now assesses impacts based on the streamlined permit revision procedures that were proposed for part 70 and part 71 in August of 1995, in lieu of the more cumbersome 4-track permit revision procedure that was contained in the part 71 proposal.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and has assigned OMB control number 2060-0336.

The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under § 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under §§ 71.6(a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e),

sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

The annual average burden on sources for the collection of information is approximately 678,000 hours per year, or 329 hours per source. The annual cost for the collection of information to respondents is $18.1 million per year. The EPA has estimated the annualized costs based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA believes the program will be implemented, most of which have fewer than average number of part 71 sources per State. There is no burden for State and local agencies. The annual cost to the Federal government is $19.8 million (assuming part 71 programs are delegated), which is recovered from sources through permit fees. Thus, the total annual cost to sources would be $37.9 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.: Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

E. Unfunded Mandates Reform Act

As noted in the Information Collection Request Document (ICR), today's action imposes no costs on State, local and Tribal governments. This is because the EPA incurs all costs in cases where it implements a part 71 program. A State, local, or Tribal government will incur costs where it elects to take delegation of a part 71 program. As noted in the ICR, EPA expects that, of the estimated eight part 71 programs, States will take delegation of

all eight programs. However, the costs of running these delegated programs do not represent costs imposed by today's action. This is because the costs of running a delegated part 71 program are essentially the same as those of running an approved part 70 program. Furthermore, taking delegation is optional on the part of States. Regardless of whether a State, local, or Tribal agency chooses to take delegation of a part 71 program, the costs to these agencies imposed by this rule over and above the costs of existing part 70 requirements are zero.

Regarding the private sector, the EPA estimates that the total cost of complying with the part 71 program would be $37.9 million per year, assuming that the part 71 program is in effect in 8 States. The estimated costs of collection of information would be $18.1 million per year, and $ 19.8 million would be collected in fees.

For these reasons, EPA believes that the total direct costs to industry under today's action would not exceed $100 million in any one year. Therefore, the Agency concludes that it is not required by Section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this regulatory action because promulgation of the rule would not result in the expenditure by State, local and Tribal governments, in the aggregate or by the private sector, of $100,000,000 or more in any one year.

List of Subjects 40 CFR Part 55

Air pollution control, Outer Continental shelf, operating permits.

List of Subjects 40 CFR Part 71

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits, Indian Tribes, Air pollution control--Tribal authority.

Dated: _____

_____
Carol Browner,
Administrator.

Billing Code 6560-50